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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 79-332

DUANE MEDDOWS,
Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT FIFTH DISTRICT

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Petitioner prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court, Fifth District entered in the above case on December 28, 1978, said decision reversing an order suppressing evidence entered in the Circuit Court of St. Clair County, Illinois. Petitioner's leave to appeal to the Illinois Supreme Court was denied on May 31, 1979.

OPINION BELOW

The decision of the court of the last resort in the State of Illinois was reported at 67 Ill. App. 3d 995, 385 N.E. 2d 765, 24 Ill. Dec. 624. The opinion is also appended in this Petition as Exhibit A.

JURISDICTION

The opinions of the Illinois Appellate Court was rendered on December 28, 1978. Leave to appeal to the Illinois Supreme Court was denied on May 31, 1979. Jurisdiction of this Court is invoked pursuant to 28 U.S.C., Sec. 1257 (3).

QUESTION PRESENTED FOR REVIEW

Did the state court incorrectly apply federal constitutional standards in reversing a trial court's suppression of statements and evidence seized from petitioner on the basis of station-house questioning during a one and one half hour period during which time the petitioner was not admonished as to his rights under *Miranda v. Arizona* and during which time he was questioned about the dynamite death of his father, where he was a suspect in said death and where said questioning was conducted by two police officers and centered around the petitioner's activities the day before his father's death, the possible motive of the petitioner in the commission of the crime and the petitioner's knowledge of the use of dynamite?

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment V

"No person . . . shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process of law; . . ."

Amendment XIV

Section 1. "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On September 22, 1975 the defendant was charged by indictment in St. Clair County, Illinois with the offense of murder. (C 4)*

On October 1, 1975 the petitioner, through counsel, filed a motion to suppress confession alleging that any confessions obtained from him were not voluntary, that he was not admonished by the police as to his *Miranda* rights and that he did not have the mental capacity to understand the nature of the proceedings involved. (C 7) Thereafter, defendant filed three motions to suppress evidence illegally seized. (C 8-C 12) One of these motions allege that items seized from the defendant's automobile was obtained without his consent and without a warrant.

On March 14, 1977, evidence was presented by the State on the defendant's Motion to Suppress Confession. The court heard testimony from David True, a Special Agent with the Bureau of Alcohol, Tobacco and Firearms of the United States Treasury

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* The designation "C" is a reference to the commonlaw record portion or pleadings portion of the record on appeal. The designation "R" is a reference to the transcript of the suppression hearing.

Department, (R-11) and William Hopkins of the St. Clair County Sheriff's Department. (R-34)

Agent True testified that on August 29, 1975, he and Deputy Hopkins took the defendant in a squad car from a funeral parlor to the St. Clair County Jail for questioning. (R-12, 14) The questioning began at 1:45 p.m. *Miranda* warnings were not given to defendant until approximately 3:15 p.m. (R-15) True said they brought him there to question him about his father's death. (R-24) He indicated that if the defendant would not have come voluntarily at this time, he would have sought to obtain a warrant or subpoena and "would have talked to him one way or another." (R-24) Defendant was placed in an interrogation room where he remained at all times in the company of at least one police officer. (R-18, 22, 25-26) At no time was he advised he was free to leave the jail. (R-25)

True testified that at the time the defendant was brought to the jail for questioning, he (True) knew that wet dynamite had been procured from the scene (R-18) and that dynamite, which had caused the death of Cletus Meddows, and dynamite used at the Pittsfield Mine at the Peabody Coal Company, were the same type. (R-18,23) He knew that defendant was employed at the mine, that he worked as a dynamite shooter, and that he had been with his father, hunting, at the time of his death. (R-22-23) He also had knowledge of the defendant's employment and military service record. (R-24)

Prior to giving *Miranda* warnings, he began to inquire as to the defendant's activities the day before his father's death. (R-17, 18) He also inquired as to the defendant's financial status as he thought that to be a possible motive in the crime under investigation. (R-19) According to Agent True, the purpose of the questioning from 1:45 p.m. to 3:15 p.m. was to verify information and obtain information. (R-25) True also indicated that after the *Miranda* warnings were given, the defendant made

a statement that he was not responsible for his father's death. (R-30, 31)

Deputy William Hopkins testified on cross-examination that he and Agent True went to the funeral home specifically "to pick the defendant up and talk to him," and that he went with them to the St. Clair County Jail in a police car. (R-37) He acknowledged the defendant was a suspect at the time he was brought to the jail (R-66), that he never left the room in which he was being questioned (R-38), and he was always in the company of at least one of the officers (R-50).

Hopkins indicated that the defendant was sought for questioning based on information they had received that led them to suspect him. (R-42) This included the fact that the defendant worked in the Pittsfield Mine as a dynamite shooter, that the type of dynamite, fuses, battery and wire used in the Pittsfield Mine were the same as those used to kill Cletus Meddows, and that defendant was one of three people at the mine who had access to that dynamite. (R-38-42)

Defendant was questioned for an hour and a half before being advised of his constitutional rights. During this period, Hopkins indicated that he and Agent True learned from the defendant that he owned a 1975 Oldsmobile 98. (R-43-44) They inquired about his duties at the Pittsfield Mine and asked about his military service record, including his duties and the type of discharge he received. (R-44) They asked him in whose name any family property was listed and also inquired about his father's life insurance policies. (R-45) Hopkins further asked about who he lived with and where he lived. (R-46)

After *Miranda* warnings were given, Hopkins testified that they pursued lines of questioning that had been opened up during the hour and a half period prior to when the warnings were

given. (R-48) Specifically, they continued to make inquiries about his occupation, the nature of which they had previously learned from him. (R-48-49) They also obtained a consent to search the 1975 Oldsmobile 98 automobile the ownership of which they had learned from the defendant prior to the time the warnings were given. (R-49) Also, in this period after *Miranda* warnings were given, the defendant admitted stealing dynamite from a mine at which time he was formally placed under arrest. (R 61-62) This statement was made and the arrest affected approximately fifteen to forty-five minutes after the warnings were given. (R-62)

As to having any prior knowledge of what type of car the defendant owned, Hopkins indicated that they had a description as to color only, but he was not exactly sure of that description. (R 53) He said he believed the defendant's car was driven by Mrs. Meddows to the scene of the explosion to pick up Mr. Meddows' car, but he was not sure and he did not recall whether he was told at the time that that was the defendant's car. (R 57-59) He further indicated that at the time he questioned the defendant, he did not know where the car was located. (R 59)

After testimony was heard, counsel for both sides presented extensive argument on the matters in issue. In his argument, the State's Attorney pointed out that a material issue before the Court in terms of exclusion for failure to advise the defendant of his constitutional rights, was whether statements taken at that time tainted the subsequent search of the defendant's automobile. (R 70-71) He argued that the search was based on information derived from an independent source. (R 71, 83-84)

The court granted the defendant's Motion in a written order filed on March 15, 1977. (C 13-14) In the order, the court found the defendant's constitutional rights were violated "when

the police failed to advise him of his rights before questioning for the period in question." (C 14) The court also suppressed as "fruits of the poisonous tree," "any statements obtained from defendant following his signing of the Waiver and Consent Form," (C 14), and "the evidence seized in the search of defendant's automobile trunk." (C 14)

The Illinois Appellate Court reversed the Order of the Circuit Court of St. Clair County in an opinion rendered on December 28, 1978. The Court held that it need not decide the threshold issue of whether defendant was subjected to custodial interrogation under *Miranda v. Arizona*. The Court felt that the subsequent statements given and the subsequent consent to search obtained from the defendant was untainted by any prior constitutional violations. 385 N.E. 2d at 768. The Court felt that the initial questioning produced answers which were "incapable of being exploited in the manner suggested." The Court felt that these were "routine answers to routine questions, totally devoid of any compulsion to induce a confession or any other type of self-incrimination by demonstrating the futility of remaining silent." 385 N.E. 2d at 769.

The petitioner timely filed a petition for leave to appeal to the Illinois Supreme Court. Said petition was denied on May 31, 1979.

REASONS FOR GRANTING THE WRIT

The State Court Incorrectly Failed to Apply Federal Constitutional Standards in Reversing the Trial Court's Suppression of Statements and Evidence Seized From Petitioner on the Basis of Stationhouse Questioning During a One and One Half Hour Period During Which Time the Petitioner Was Not Admonished as to His Rights Under Miranda v. Arizona.

On August 29, 1975 the petitioner, Duane Meddows was taken in a police car from a funeral parlor to an interrogation room in the St. Clair County, Illinois jail by two police officers who wanted to talk to him about the homicide death of his father. The investigation at that time had focused on the petitioner. One of the officers indicated that although he did not believe they had probable cause to arrest the petitioner they would have sought a warrant or subpoena if he had not cooperated. In any event, one of the officers indicated they "would have talked to him one way or another."

The questioning of the petitioner began at 1:45 p.m. but *Miranda* warnings were not given until 3:15 p.m. During this hour and a half period, the petitioner was not permitted to leave the interrogation room and was at all times in the company of one or more police officers. At no time was he advised he was free to leave.

During this initial period of questioning, the two officers inquired about petitioner's occupation as a dynamite shooter as well as his military service record and the status of various items of family property including life insurance policies. The officers also inquired about the defendant's automobile and about his living arrangements. Finally, after an hour and a half of questioning, at 3:15 p.m. the *Miranda* warnings were given.

Between 15 and 45 minutes later, according to the testimony of the officers, petitioner made an incriminating statement that he had stolen dynamite from the mine. In addition, he apparently made an exculpatory statement purportedly denying that he was responsible for the death of his father. In addition, the officers indicated that questioning was pursued at this time along the same line as matters discussed before proper warnings were given to the petitioner.

Thereafter the defendant also consented to the search of his automobile.

Based on this factual posture, the trial judge felt that the defendant was subjected to custodial interrogation within the meaning of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1976), during the initial hour and a half period of questioning. In addition, he suppressed all statements made after warnings were given and the consent search of the petitioner's automobile on the grounds that they were derivative of the prior illegal interrogation of the petitioner.

The Illinois Appellate Court reversed the trial court obstensibly holding that the statements made and the evidence seized subsequent to the time the *Miranda* warnings were given at 3:15 p.m. cannot be deemed to be the product of any questioning held prior to that time. The Court felt that the initial one and a half hour period of interrogation was "routine" and that the petitioner had ascribed too much importance to this line of questioning. Clearly, the Appellate Court erred in this regard.

In the *Miranda* decision, this court defined custodial interrogation as ". . . questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way". 384 U.S. at 444. In requiring law enforcement officials to inform a suspect of his rights under the Fifth and Sixth Amendments to the

United States Constitution, this court in *Miranda* sought to deter police officers from compelling one to be a witness against himself. Even prior to *Miranda* this court had consistently expressed its abhorrence of such practices. In *Counselman v. Hitchcock*, 142 U.S. 547, 12 S. Ct. 195, 35 L. Ed. 1110 (1892), the court stated that the Fifth Amendment was designed to protect "against that use of compel testimony which consists in gaining therefrom a knowledge of the details of the crime and the sources of information which may supply other means of convicting the witness or party". 142 U.S. at 586. This court more recently repeated its admonition in a Fourth Amendment context in its decision in *Brown v. Illinois*, 422 U.S. 590, 605, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975).

The lower courts, however, have grappled with the question of when the protections afforded by *Miranda* come into play. The question presented in this case is simply whether the petitioner was subjected to an interrogation so as to invoke the safeguards of *Miranda* during the initial hour and half period of detention in questioning by the officers or whether the officers' conduct during this period can be properly characterized as mere "routine answers to routine questions" as the Appellate Court held. In *Oregon v. Mathiason*, 429 U.S. 492, 97 S. Ct. 711, 50 L. Ed. 2d 714 (1977), this court held that the mere fact that one was detained for questioning in the station house was not dispositive of the issue of whether a suspect was subjected to a custodial interrogation within the meaning of *Miranda*. However, in that case the fact showed that the defendant was not in custody where he voluntarily came to the police station, he was immediately informed he was not under arrest and at the close of a one-half hour interview was permitted to leave the station without hindrance. 429 U.S. at 495.

In a case decided the same term, this court also had occasion to discuss the issue of whether one is in custody or being "interrogated" so as to invoke the proper constitutional safeguards.

In *Brewer v. Williams*, 430 U.S. 387, 97 S. Ct. 1232, 51 L. Ed. 2d 424 (1977), this Court held that the defendant's Sixth Amendment right to counsel had been violated. It was held that the so called "Christian burial speech" given to the defendant by the police officer was, in effect, a form of interrogation. This Court correctly noted that Williams' constitutional claim to counsel would not "have come into play had there been no interrogation." 430 U.S. at 400.

Several other cases decided by this court in a Fourth Amendment context have held actions of officers to be constitutionally infirm wherein the initial detention was illegal in that it was without probable cause and more importantly merely used to induce the suspect to provide incriminating statements. See e.g. *Dunaway v. New York*, — U.S. — Sup. Ct. — 60 L. Ed. 2d 824 (1979); *Brown v. Illinois*, 422 U.S. 590, 95 Sup. Ct. 2254, 45 L. Ed. 2d 416 (1975); *Davis v. Mississippi*, 394 U.S. 721, 89 Sup. Ct. 1394, 22 L. Ed. 2d 676 (1969).

This Court should grant the Petition for Certiorari in this case in light of the unique factual posture in which the issue of whether or not the defendant was subjected to a custodial interrogation is presented. The facts at bar reveal a situation in which the petitioner was taken to an interrogation room at a county jail and questioned for a period of an hour and a half by two law enforcement officials. The questioning was clearly more than of a routine nature as the Appellate Court has vainly tried to characterize it. No warnings were given to the petitioner for a period of one and one-half hours. Immediately following the time warnings were given, the questioning continued. Within fifteen to forty-five minutes the officers had obtained at least one inculpatory and one exculpatory statement. Clearly, the actions of the officers after 3:15 p.m. was merely a continuation of the scenario that had been going on for an hour and a half. No realistic reading of the record

before this Court could indicate to the contrary. The only possible object of the nature and extent of the officers' questioning of the defendant in this case was to break him down and elicit a confession from him.

In the same context this Court has granted certiorari in a case of *Rhode Island v. Innis*, Docket No. 78-1076, cert. granted, 99 Sup. Ct. 1277 (February 26, 1979); *State v. Innis*, 391 A. 2d 1158 (R. I. 1978). In the *Innis* case, the defendant claimed Fifth and Sixth Amendment violations as a result of an illegal interrogation wherein police officers made statements to the effect that they feared that the murder weapon would be picked up by a student at a local school for the handicapped children. Said discussion was held after defendant was warned of his rights and asserted his right not to talk in the absence of an attorney. The Rhode Island Supreme Court held that this "interrogation" was virtually identical to the "Christian burial speech" involved in *Brewer v. Williams*, supra, notwithstanding the fact that the police officer did not directly address the defendant, that defendant volunteered to show the police location of the murder weapon after hearing the conversation, and that he did so after receiving fresh *Miranda* warnings. 391 A. 2d at 1160 and 1161.

The situation at bar clearly evidences more flagrant conduct on the part of law enforcement officials. The petitioner was extensively questioned for a period of an hour and a half without being informed of his constitutional rights. Clearly, the questioning amounted to an interrogation within the meaning of *Miranda*. Defendant was not told he was free to leave. He was not permitted to leave. He was questioned about his activities immediately prior to the time the alleged crime occurred when, in fact, the officers admitted that the investigation had apparently focused on him. He was questioned about possible motives for committing the crime including the status of his father's life insurance policies and the status of his

living arangements, since as the State's Attorney later indicated at the suppression hearing, there apparently evidence of a love affair between petitioner and his step-mother, the victim's wife. The motive of the officers is particularly clear in the testimony of David True of the Alcohol, Tobacco, and Firearms Division of the Treasury Department. True indicated that if petitioner had not come voluntarily at the time he was brought from the funeral parlor to the county jail, he would have sought a warrant or subpoena and that he "would have talked to him one way or another" even though, as far as he was concerned, they did not have probable cause to arrest the petitioner. It was further indicated that the officers' purpose was to *obtain* as well as to verify information.

To allow the decision of the Illinois Appellate Court to stand would seriously undermine the incentive for law enforcement officials to give *Miranda* warnings and to otherwise respect an individual's Fifth and Sixth Amendment rights. By its holding that the initial questioning in this case was "routine" or, as one of the officers put it, "background information", the Illinois Appellate Court opened a "Pandora's box" whereby law enforcement officials can easily circumvent the giving of *Miranda* warnings. Accordingly, it is respectfully requested that this Court grant the Petitioner's Petition for Writ of Certiorari to the Illinois Appellate Court.

CONCLUSION

The decision of the Illinois Appellate Court is a unique departure from this Court's decision in *Miranda v. Arizona,* which requires that a suspect be informed of his Fifth and Sixth Amendment rights when taken into custody and interrogated about a crime. As such, it provides law enforcement officials with an incentive to disregard the dictates of that decision. This Petition for Writ of Certiorari should therefore be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

No. 77-248

In the Appellate Court of Illinois
Fifth District

The People of the State of Illinois, Plaintiff-Appellant, v. Duane Meddows, Defendant-Appellee.	Appeal from the Circuit court of St. Clair County, Illinois Honorable Robert L. Gagen, Judge Presiding

MR. JUSTICE JONES delivered the opinion of the court:

This is an appeal by the State pursuant to Supreme Court Rule 604(a)(1) (Ill. Rev. Stat. 1977, ch. 110A, par. 604(a)(1)) from an order of the trial court suppressing certain statements of the defendant and physical evidence seized from the trunk of his car. The suppression was ordered on the basis of the court's finding that these items of evidence were the "fruits" of a prior custodial interrogation that was not preceded by advising defendant of his constitutional rights in accord with *Miranda v. Arizona* (1966), 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694.

The question on appeal is whether the suppressed evidence is sufficiently connected to any illegality so as to require its suppression, that is, whether it "has been come at by exploitation" of the interrogation that occurred without benefit of *Miranda* warnings (*Wong Sun v. United States* (1963), 371 U.S. 471, 488, 83 S. Ct. 407, 417, 9 L. Ed. 2d 441). We find that it has not.

From the record, it appears that at approximately 7 a.m., August 27, 1976, Cletus Meddows, the father of defendant Duane Meddows, was killed by the detonation of an explosive device while on a hunting expedition near Freeburg, Illinois with defendant. An examination of the scene turned up two extremely wet packets of unexploded dynamite and sundry paraphanalia associated with the setting of explosive charges. The code numbers which this dynamite bore traced it to pit six of the River King coal mine where defendant was employed as a dynamite shooter.

On August 29, defendant was questioned by two law enforcement officers. During this questioning, defendant admitted stealing dynamite from the mine and consented to a search of his car. The search of the trunk of his car produced tools of the type needed to rig an explosive device, tape matching that found around the packets of dynamite and a cardboard box from which a piece had been cut. The State represented to the trial court that it had an expert who would testify that a three inch by six inch piece of cardboard used as part of the explosive device was cut from the box found in defendant's car.

The defendant was formally charged with murder in connection with the dynamite slaying. He subsequently filed a motion to suppress statements and two motions to suppress evidence, one of which was directed at the items found in the car's trunk. Following a hearing on the motion to suppress statements, at which the only testimony presented was that of the interrogating officers, the court suppressed the defendant's admission and the items seized from his car. The State brought this appeal.

At the hearing on the motion to suppress, the following pertinent information was adduced.

On August 29, 1976, David True, a special agent with the federal Bureau of Alcohol, Tobacco and Firearms, and Deputy

William Hopkins of the St. Clair County Sheriff's Department went to a particular funeral home where defendant was located for the purpose of asking him to come with them to the county sheriff's office for questioning concerning his father's death. He was a chief suspect in the case at that time because of information which their investigation had revealed, including the facts: that defendant was employed at a coal mine as a dynamite shooter; that he was one of three people at the mine who had access to dynamite; that the same type dynamite and materials used at the mine were employed in the crime; that defendant was the victim's son; and that defendant and the victim were together on a hunting trip when the victim was killed.

When the officers met defendant at the funeral home, they told him that he did not have to go with them but that they would like for him to come with them to the station for questioning. The defendant voluntarily agreed to accompany them; however, if he had refused, the police would have sought to obtain an arrest warrant or a subpoena in order to gain access to him for questioning. The officers drove defendant to the sheriff's office in a police car. They arrived there at 1:45 p.m. and began questioning him in an interrogation room without giving him his *Miranda* warnings. The defendant was questioned for one-and-a-half hours before he was advised of his *Miranda* rights at 3:15 p.m., after which he was questioned some more. At no time during this initial questioning period was defendant told that he was free to leave if he wanted to. However, if he had insisted on being returned to the funeral home, the officers would have complied since he was not then under arrest.

The police used the initial questioning period both to verify information they already had and to obtain new information. During the period before defendant was advised of his rights, he was questioned concerning his activities on the day before the incident (when the device may have been planted), his duties at the mine and in his previous military service, his financial

status and his living arrangements. In an attempt to establish the existence of a financial motive for the crime, the officers inquired about his father's life insurance policies and asked defendant in whose names any family property was listed. Also during this time, the police determined that the car which defendant owned was a 1975 Oldsmobile 98.

In anticipation of interrogation with respect to the incident itself, the officers thoroughly admonished defendant of his *Miranda* rights at 3:15 p.m. by reading them to him from a prepared form. They then had him read the form. The defendant indicated that he understood his rights and then signed a waiver of rights provision that was witnessed by the officers. Defendant subsequently admitted stealing some dynamite from the mine and consented to a search of his car, the location of which had been revealed at some point in the interrogation. (It was not established whether the location of the car was revealed prior to or after the giving of *Miranda* rights.) After admitting the theft, defendant was no longer free to depart, but he was not booked for murder until much later in the evening after a consent search of his living quarters had been made.

It is well settled that one must be informed of his *Miranda* rights only before law enforcement officers initiate a custodial interrogation. (*Oregon v. Mathiason* (1977), 429 U.S. 492, 97 S. Ct. 711, 50 L. Ed. 2d 714; *People v. Clark*, 55 Ill. App. 3d 496, 371 N.E. 2d 33.) In *Miranda*, the Supreme Court defined "custodial interrogation" as:

> "* * * questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." (384 U.S. 436, 444, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 706.)

The trial court found that defendant was the subject of a custodial interrogation from the very first moment he was questioned. The evidence suppressed, however, was not obtained before he was advised of his rights and was not excluded by direct application of the exclusionary rule of *Miranda*. Rather, it was excluded as the fruits of the questioning which took place before defendant was given his *Miranda* warnings pursuant to the "fruit of the poisonous tree" doctrine discussed in *Wong Sun v. United States*, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441. The order of the trial court, however, does not indicate in what way the suppressed evidence was "come at by *exploitation*" of the asserted illegal questioning (Emphasis added; *Wong Sun*, 371 U.S. 471, 488, 83 S. Ct. 407, 417).

The State contends in this appeal that the defendant was not "in custody" during the questioning which preceded the giving of his *Miranda* warnings and cites *Oregon v. Mathiason* in support of its contention. Our research has revealed several Illinois cases in which reviewing courts have found by application of *Mathiason* that the defendant was not entitled to warnings prior to being interrogated. See *People v. McCue*, 48 Ill. App. 3d 41, 362 N.E.2d 760; *People v. Wipfler*, 68 Ill. 2d 158, 368 N.E.2d 870; *People v. Varney*, 58 Ill. App. 3d 70, 373 N.E.2d 1033.

On the other hand, the defendant contends that the court's finding of custodial interrogation was not against the manifest weight of the evidence, emphasizing the factors presented here which Illinois courts have found relevant in assessing whether a custodial interrogation has occurred (*e.g.*, the amount of knowledge possessed by the police at the time of the interrogation, the tone and method of questioning, and who, if anyone, was the focus of the investigation at the time of the interrogation and the place in which the questioning takes place; *People v. Dunn*, 31 Ill. App. 3d 854, 860, 334 N.E.2d 866, 871, *cert. denied*, 426 U.S. 950, 96 S. Ct. 3171; *People v. Snow*, 39 Ill. App. 3d 887, 350 N.E.2d 875.)

Our examination of the record convinces us that a close question is presented as to whether the initial questioning was a custodial interrogation. There are numerous facts supportive of either conclusion.

In *Oregon v. Mathiason* the Supreme Court found that *Miranda* warnings were not required to be given before the interrogation of Mathiason since he was not in custody "or otherwise deprived of his freedom of action in any significant way." The court concluded that there was no indication that the questioning took place in a context where defendant's freedom to depart was restricted in any way, emphasizing that defendant appeared voluntarily at the police station, that he was informed that he was not under arrest and that defendant left the police station without hindrance at the interview's conclusion. (429 U.S. 492, —, 97 S. Ct. 711, 714.) The court went on to state:

> "* * * [P]olice officers are not required to administer *Miranda* warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. *Miranda* warnings are required only where there has been such a restriction on a person's freedom as to render him 'in custody.'" (429 U.S. 492, —, 97 S. Ct. 711, 714.)

There are points of similarity between this case and *Mathiason*. Although Meddows was not told that he was free to leave while at the sheriff's office, he had reason to believe that he was not under arrest and that such an alternative was available to him since he was initially informed that he did not have to accompany the officers. The record also reflects that he went voluntarily with the officers to the sheriff's office.

However, unlike *Mathiason*, defendant's actual freedom to depart was never demonstrated. He was arrested during the questioning. In addition, several of the factors which our courts

have considered relevant in distinguishing between custodial and investigative interrogation or the time when, absent formal charge or arrest, custody of the defendant is established are present here. (See *People v. Dunn; People v. Snow.*) First, the information in the possession of the interrogating officers at the time of the questioning was probably sufficient to establish probable cause to arrest defendant. In fact, agent True indicated that had defendant refused to go with them he would have sought to obtain an arrest warrant. Second, the tone of the initial questioning might be considered accusatory rather than merely investigatory; part of the interrogation was used to probe for a financial motive on defendant's part for his father's death. Third, the focus of the investigation was obviously upon the defendant at the time of the interrogation. He was the only person with access to the dynamite used in the crime who had any connection to the victim.

However, this court is of the opinion that a determination as to whether the initial questioning was a custodial interrogation is not necessary. Even if we were to assume that the interrogation were custodial, the suppression of the instant evidence would be error since it was not "come at by exploitation of" the prior questioning.

When asserting the fruit of the poisonous tree doctrine, the burden is on the defendant in the first instance to establish the primary illegality and to show its connection to what are alleged to be the fruits of the illegality. (*People v. Wilson*, 60 Ill. 2d 235, 326 N.E.2d 378; *People v. Robbins*, 54 Ill. App. 3d 298, 369 N.E.2d 577.) The connection required is that the evidence "has been come at by exploitation of that illegality" (*Wong Sun*, 371 U.S. 471, 488, 83 S. Ct. 407, 417).

The defendant's position is that even though he was scrupulously advised of his constitutional rights and waived them before he admitted the theft of dynamite and gave his consent to a

search of his car, the admission and consent were not voluntary but rather were obtained by exploitation of defendant's previous answers that he was a dynamite shooter and owned a 1975 Oldsmobile 98 automobile. The trial court apparently agreed with this theory.

After due consideration, we find that we must reverse the trial court's order of suppression.

The fruit of the poisonous tree doctrine is simply not appropriate to these facts. The defendant's theory ascribes much import to defendant's answers that he worked as a dynamite shooter and that he owned a particular automobile. He asserts that these answers compelled him, after being scrupulously advised of his rights against self-incrimination, to consent to a search of his car and to admit a theft of dynamite. We believe that these answers are incapable of being exploited in the manner suggested. They are routine answers to routine questions, totally devoid of any compulsion to induce a confession or any other type of self-incrimination by demonstrating the futility of remaining silent. (*Cf. People v. Robbins*) We note in this regard that the claimed import of these answers is not supported by the record in that the defendant, after receiving the warnings, denied any responsibility for the death of his father.

Furthermore, in view of the fact that the officers knew prior to any questioning that defendant was employed as a dynamite shooter, that a car was observed near the scene of the crime the night before the explosion and that the defendant owned a car, it is highly likely that they would have sought, after advising defendant of his rights, to obtain consent to search his car and to inquire about his possession of dynamite belonging to the coal company regardless of his answers to the preliminary questions. This being the case, the weakness of the link between the suppressed evidence and defendant's prior answers is further demonstrated. Although the location of the car might have

been obtained before defendant was advised of his rights, we do not believe that that fact alone could make the defendant's consent a fruit of the previous questioning.

Of primary importance to our decision is the fact that defendant was thoroughly admonished of his *Miranda* rights before his admission and consent were obtained. In addition, the illegality, if any, on the part of the officers does not amount to a flagrant misconduct. (See *People v. Robbins;* and *Brown v. Illinois,* 422 U.S. 590, 603-4, 95 S. Ct. 2254, 2261-2, 45 L. Ed. 2d 416.) They merely obtained answers to some routine questions without first giving defendant his *Miranda* warnings. As has already been noted, the answers of defendant to which our attention has been drawn do not have the capacity to induce a subsequent self-incrimination.

For the foregoing reasons, we reverse the suppression order of the circuit court of St. Clair County and remand this cause for further proceedings consistent with this opinion.

Reversed and remanded.

KARNS, J., concurs.

PUBLISH IN FULL

MR. PRESIDING JUSTICE GEORGE J. MORAN, dissenting:

Prior to stating my reasons for dissenting in this cause, I wish to call attention to some inaccuracies in the majority opinion. The majority says that "even though he [defendant] was scrupulously advised of his constitutional rights and waived them * * *." I have examined appellee's brief carefully and find no such concession.

The opinion also states that when asserting the fruit of the poisonous tree doctrine the burden is on the defendant in the first instance to establish the primary illegality and to show its connection to what are alleged to be the fruits of the illegality, citing *People v. Wilson*, 60 Ill.2d 235 and *People v. Robinson*, 64 Ill.App.3d 298. This is an inaccurate statement of the law enunciated in these two cases. The rule of law stated in those two opinions is that once the defendant establishes the primary illegality and shows its connection to what are alleged to be the fruits of the illegality, the prosecution then has the burden of establishing by clear and convincing evidence that the challenged evidence was obtained by means sufficiently distinguishable to be purged of the primary taint. This, to me, means that the test enunciated was to require the accused to establish the primary illegality and make a prima facie showing of the connection and upon the showing of that prima facie connection the burden is shifted to the prosecution to prove the contrary by clear and convincing evidence. (Compare *Harrison v. United States*, 392 U.S. 219, 20 L.Ed.2d 1047, 88 S. Ct. 2008.)

After hearing testimony offered by the State on the defendant's motion to suppress confession, the court found that the defendant was "in custody" within the meaning of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) and therefore all statements obtained from the defendant prior to the time proper warning were given were inadmissible. The court also suppressed as fruit of the poisonous tree all statements made by the defendant immediately after warnings were given and certain physical evidence obtained from the defendant's car.

The law is clear that the ruling of a trial judge on a motion to suppress confession will not be reversed on appeal unless it is against the manifest weight of the evidence, since he is in the best position to determine the credibility of the witnesses and the competency of the confession. (*People v. Young*, 131

Ill.App.2d 113, 266 N.E.2d 160.) This is true whether the motion involves a confession or merely admissions. *People v. Mrozek*, 52 Ill.App.3d 500, 367 N.E.2d 783.

The trial court after hearing the witnesses on the motion to suppress concluded that the defendant was in custody when they first took him to the station. I agree. The investigation had focused upon him, he was in the type of setting described in *Miranda* and he was not free to leave. In any event, there was sufficient evidence for the trial court so to find and this finding is binding on us if supported by the evidence, which it was.

Therefore, in my opinion we should commence with the fact that the defendant was in custody when he first was taken into the station and that he was entitled to the *Miranda* warnings before any interrogation began. The reasoning of the majority impels this conclusion, but it ducks the question.

The reasoning of the trial court and the argument of counsel for the defendant was and is that all of the statements taken after the *Miranda* warnings were given were inadmissible because of the fruit of the poisonous tree doctrine. This position is wrong. In fact, it is so wrong that I do not think the case should be based upon this issue even though argued before us. When there has been an uninterrupted interrogation with no *Miranda* warnings given at the beginning of the interrogation, and where *Miranda* warnings are given at a time later on in the interrogation, I have never heard of an argument that the latter part of the statement must be suppressed under the "fruit of the tree doctrine." If it is to be suppressed, it must be done under the principles laid down in *Miranda*. In *Miranda* the Supreme Court pointed out that if authorities conclude that they will not provide counsel during a reasonable period of time in which investigation in the field is carried out, they may refrain from doing so without violating the person's *5th amend-*

ment privilege so long as they do not question him during that time. The court further stated that if the interrogation continues without the presence of an attorney and a statement is taken, a heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination and his right to retained or appointed counsel.

From the foregoing I conclude that the statement as a whole was in violation of the principles enunciated in *Miranda* and therefore the statement was involuntary. In my opinion the trial court was correct in suppressing the statement but not for the reason enunciated, i.e., that it was the fruit of the poisonous tree, but for the reason that I have previously stated. The court in its order said:

> "There can be no question that this questioning took place while Defendant was in custody. The Defendant was the prime suspect in this case. He was taken by the police from a funeral home to the County Jail. He was not advised for an hour and one-half that he did not have to talk to these officers. He was not advised that he could leave at any time he wanted. He was not advised that he was not under arrest and was not advised that the investigation into his father"s homicide was focusing on him. Under the totality of the circumstances Defendant's Constitutional rights were violated when the police failed to advise him of his rights before questioning for the period in question."

I think the following language from *Brown v. Illinois*, 422 U.S. 590, 45 L.Ed.2d 416, 95 S.Ct. 2254, is particularly appropriate to the actions of the two police officers in this case:

> "The illegality here, moreover, had a quality of purposefulness. The impropriety of the arrest was obvious; awareness of that fact was virtually conceded by the two

> detectives when they repeatedly acknowledged, in their testimony, that the purpose of their action was 'for investigation' or for 'questioning'. [Citation.] The arrest, both in design and in execution, was investigatory. The detectives embarked upon this expedition for evidence in the hope that something might turn up. The manner in which Brown's arrest was effected gives the appearance of having been calculated to cause surprise, fright, and confusion." (422 U.S. 590, 605.)

I would affirm the order of the trial court.

PUBLISH IN FULL.

APPENDIX B

In the Circuit Court, Twentieth Judicial Circuit
of Illinois, St. Clair County

People of the State of Illinois,
vs.
Duane Meadows,
Defendant.

No. 75-CF-730
Charge: Murder

ORDER

March 15, 1977

This cause comes before the Court on Defendant's Motion to Suppress Statement; witnesses sworn and testimony taken; and the Court being fully advised in the premises:

It is hereby ordered that said Motion to Suppress be and the same is hereby allowed. Because information was obtained from the Defendant prior to his being advised of his *Miranda* rights, and because this information was used to obtain a search warrant to search defendant's car, the fruits of this search must also be suppressed.

Two witnesses were called on behalf of the State—Special Agent David True and Captain William Hopkins, St. Clair County Sheriff's Department. Both officers testified that they went to a funeral home on August 29, 1975, and requested of the defendant that he accompany them to the St. Clair County Jail for questioning. They advised the defendant that they would take him in their car and after questioning him would return him to the funeral home. Agent True stated that at this time he didn't believe that he had probable cause for a Com-

plaint and Warrant. He indicated, however, that if the defendant had not voluntarily accompanied the two (2) officers to the jail, he would have sought a warrant and/or subpoena. Both officers acknowledged that defendant was a prime suspect with respect to his father's murder.

At the jail the Defendant was taken to an interrogation room where he was questioned for approximately one and one-half hours. Prior to the commencement of this questioning, the Defendant was not advised of his Miranda rights. Agent True explained the reason for not advising the Defendant was that the questions dealt only with background information. However, the officers learned during this period of time the make and model of Defendant's car and the location of the car. Armed with this information the officers applied for and were granted a search warrant to search Defendant's car.

After obtaining the so-called background information, the officers then advised the Defendant of his *Miranda* rights. People's Exhibit No. 1 is the Consent and Waiver Form executed by Defendant.

The State takes the position that under the totality of the circumstances that the Defendant's rights were not violated by not having his rights read to him prior to the hour and one-half of questioning. They argue that the Defendant voluntarily accompanied the police officers to the jail and voluntarily talked to the officers. The State further argues that this was not a custodial interrogation.

However, the test of voluntariness, begins when the Defendant has been advised of his Constitutional rights so that he can decide whether he wants to talk (to the police) when he knows his statements can be used against him in court. There can be no question that this questioning took place while Defendant was in custody. The Defendant was the prime suspect in this

case. He was taken by the police from a funeral home to the County Jail. He was not advised for an hour and one-half that he did not have to talk to these officers. He was not advised that he could leave any time he wanted. He was not advised that he was not under arrest and was not advised that the investigation into his father's homicide was focusing on him.

Under the totality of the circumstances the Defendant's Constitutional rights were violated when the police failed to advise him of his rights before questioning for the period in question.

Having decided the Defendant's rights were violated the question then becomes whether the fruits of that illegal activity can be used against this Defendant. Under the "fruit of the poisonous tree" doctrine enunciated in *Wong Sun v. United States*, 371 U.S. 471 (1963), the evidence seized in the search of Defendant's automobile trunk must be suppressed. Under the same doctrine any statements obtained from Defendant following his signing of the Waiver and Consent form must also be suppressed.

Circuit Judge

sr

Supreme Court, U. S.
FILED
NOV 9 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

NO. 79-332

DUANE MEDDOWS,

Petitioner,

v.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIFTH DISTRICT

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OPINION BELOW

The opinion of the Appellate Court of Illinois, Fifth Judicial District, is reported at 67 Ill.App.3d 995, 385 N.E.2d 765, 24 Ill. Dec. 624 (1978).

JURISDICTION

The petitioner invokes jurisdiction pursuant to 28 U.S.C. 1257. The respondents submit that jurisdiction is lacking for the reasons set forth in Argument I.

CONSTITUTIONAL PROVISIONS

Petitioner relies on the Fifth and Fourteenth Amendments to the Constitution of the United States.

QUESTIONS PRESENTED

I. Whether review of the decision of the Appellate Court of Illinois is premature because the finality requirement of 28 U.S.C. 1257 has not been met.

II. Whether the Illinois Appellate Court correctly reversed the trial court's suppression of statements and evidence seized from the petitioner where there was no custodial interrogation prior to informing petitioner of his rights under *Miranda* and where the evidence seized has not been come at by exploitation of any illegality.

STATEMENT OF THE CASE

Petitioner was charged by indictment with the August 27, 1975 dynamite murder of his father, Cletus Meddows (R. C4). Petitioner filed a motion to suppress confession under chapter 38, section 114-11 of the Illinois Revised Statutes, in which he alleged *inter alia* that his confession was involuntary, that it was given in the absence of the proper admonishments, and that it was induced by promises, physical coercion, and violence (R. C7). Subsequently, petitioner filed three motions to suppress physical evidence, to-wit: dynamite and other blasting paraphernalia discovered in his car and trailer, on the ground that these items were seized in violation of his rights under the Fourth Amendment (R. C8-C12). Specifically, petitioner alleged that his consent to the search was involuntary (*Id.*).

The cause was called for a hearing solely on the motion to suppress confession (R. 7, 9, 121). At this hearing, the State called two witnesses: David True, a Special Agent with the Bureau of Alcohol, Tobacco, and Firearms of the United States Treasury Department (R. 11), and William Hopkins, a St. Clair County Sheriff's Deputy (R. 34). The substance of their testimony was as follows:

In the course of their investigation of the dynamite death of Cletus Meddows, the officers learned a number of things which led them to suspect the petitioner. The petitioner worked for Peabody Coal as a blaster at the Pittsfield Mine (R. 22, 39-40). The fuses and dynamite which killed Cletus Meddows were of the type used by Peabody Coal (R. 23, 41). Petitioner was only one of three people at the mine with access to the dynamite (R. 41). Petitioner was present at the scene of the explosion in which his father was killed (R. 66).

It was with these facts in mind that the officers ap-

proached the petitioner at the funeral home about 1:45 p.m. on August 29, 1975 (R. 11-2). They asked the petitioner if he would go with them to the Sheriff's Department to talk to them (R. 14). They explained to the petitioner that he did not have to go with them (R. 19), and that they would take him back to the funeral home after the questioning (R. 49). The petitioner, who was "very voluntary about the whole affair" (R. 19), agreed to accompany the officers, who drove him to the Sheriff's Department (R. 14).

The officers asked the petitioner general questions about his background for about an hour (R. 12, 35). During this time the petitioner talked freely and answered questions without any hesitation (R. 25). Prior to asking the defendant questions about the incident under investigation, the officers advised the petitioner of his rights (R. 17, 35). The petitioner was advised of his rights at 3:15 p.m. (R. 27). Deputy Hopkins read a standard waiver form to the petitioner, and then asked the petitioner to read it himself (R. 13). The petitioner, who had completed the eighth grade and who could read and write, stated that he understood the form, and signed it (R. 13, C126, People's Exhibit 1). The officers made no promises to the petitioner, and used neither physical force nor the threat of physical force in questioning him (R. 36).

At this time, petitioner was not under arrest and was free to leave (R. 20). The petitioner denied that he was responsible for the death of his father (R. 31-2). However, some time between 3:30 p.m. and 4:30 p.m. the petitioner admitted stealing dynamite from the mine (R. 61-2). It was at this point that petitioner was placed under arrest and was no longer free to leave (*Id.*). The officers obtained petitioner's consent to search his automobile and bedroom (R. 43, 46, 49).

In a written order, the court granted petitioner's motion to suppress statement (R. 13). The court further ordered the

suppression of the items seized from the petitioner's car, because the information upon the basis of which the officers obtained a search warrant for the car was acquired from the petitioner prior to the time they advised him of his *Miranda* rights (R. C13). The court found that the petitioner was in custody during the entire time he was questioned at the Sheriff's Department (R. C14).

The People filed a Notice of Appeal from the order suppressing physical evidence and suppressing statements made by the defendant (R. C16). The Appellate Court of Illinois reversed the order of the Circuit Court of St. Clair County in an opinion rendered on December 28, 1978. *People* v. *Meddows,* 67 Ill.App.3d 995, 385 N.E.2d 765 (1978). The petitioner filed a petition for leave to appeal to the Illinois Supreme Court, which was denied on May 31, 1979. The petitioner has not yet been brought to trial for the offense of which he stands charged.

REASONS WHY THE WRIT SHOULD BE DENIED

I. The Jurisdictional Requirement Of Finality Of Judgment Has Not Been Met.

Petitioner has invoked jurisdiction to this Court pursuant to 28 U.S.C. 1257. The first jurisdictional predicate of § 1257, in all of its manifestations, is that there be a "final" judgment or decree by the highest state court respecting the federal question. In the instant matter, the petitioner is seeking this court to review the Illinois Appellate Court's reversal of a suppression order in a criminal case. The case has not proceeded to trial and as such the petitioner does not stand convicted of any offense.

It has long been established that the final judgment in a criminal proceeding is the sentence. *Berman* v. *United States,* 302 U.S. 211, 212, 58 S.Ct. 154 (1937); *Parr* v. *United States,* 351 U.S. 513, 518, 76 S.Ct. 912 (1955). Therefore, a state court judgment which merely disposes of a motion relating to the admission of evidence lacks the finality necessary to support review by this Court. In *Chapman* v. *California,* 405 U.S. 1020, 92 S.Ct. 1284 (1972) this Court denied certiorari in a case very similar to the one at bar. In *Chapman,* the trial court ordered that certain items of evidence be suppressed. The Appellate Department of the Superior Court affirmed the suppression of various items. The state appealed this suppression and the Court of Appeals reversed. The California Supreme Court denied a hearing on the matters and certiorari was sought in this Court. The petition for certiorari was denied, "it appearing that the state court decision is not final. . . ." 405 U.S. at 1020. See also *Wilson* v. *Schnettler,* 365 U.S. 381, 384-385, 81 S.Ct. 632, 635 (1961).

It has long been the practice of this Court to avoid

rendering unnecessary judgments. In the instant case this practice is solidified by notions of both comity and judicial economy. The instant proceeding in the Illinois trial court is at its embryonic stage. Should the petitioner proceed with his trial and be acquitted there will be no further need for appellate review. Should the trial proceed and result in a conviction the petitioner has available to him an appeal as a matter of right in the Illinois Appellate Court and the opportunity for review in the Illinois Supreme Court. Review of a motion to suppress evidence at this stage of the criminal justice proceedings would only further delay the petitioner's right and the state's right to bring this matter to a conclusion. Because the jurisdictional requirement of finality of judgment pursuant to 28 U.S.C. 1257 has not been met the writ should be denied.

II. The Illinois Appellate Court Correctly Reversed The Trial Court's Suppression Of Statements And Evidence Where There Was No Custodial Interrogation Prior To Informing Petitioner Of His Rights Under *Miranda* And Where The Evidence Seized Has Not Been Come At By Exploitation Of Any Illegality.

In reversing the trial court, the Illinois Appellate Court did not reach the issue presented by the petitioner that he had been subjected to custodial interrogation without being advised of his rights under *Miranda* v. *Arizona* (384 U.S. 436, 86 S.Ct. 1602 (1966)). The Appellate Court held that even assuming *arguendo* that the interrogation was custodial, that the suppression of the evidence in question was not warranted since it was not "come at by exploitation of" the prior questioning. Respondent is in agreement with this opinion yet further states that there was no custodial interrogation prior to the *Miranda* admonishments.

The law is well settled that one must be informed of his *Miranda* rights only before law enforcement officers initiate a custodial interrogation. *Oregon* v. *Mathiason,* 429 U.S. 492, 495, 97 S.Ct. 711, 714 (1977). In *Miranda,* this Court defined "custodial interrogation" as:

> . . . [Q]uestioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any way. 384 U.S. 436, 444, 86 S.Ct. 1602, 1612 (1966).

In the instant case, the trial court ordered the suppression of "statements" obtained from the petitioner. The record, however, reflects that the petitioner made only a single incriminating remark, to-wit: his admission that he stole dynamite from the mine (R. 62). This statement came after the petitioner had been thoroughly advised of his rights. (R. 13, 62-65, 126). The *Miranda* warnings were given after approximately 1½ hours of questioning by police officers. It is this delay of 1½ hours that petitioner seeks to qualify as custodial interrogation to aid in his suppression attempts. The undisputed testimony, however, clearly shows that there was not custodial interrogation prior to *Miranda* warnings.

At the suppression hearing, the following was presented: Government Agent True testified that when they met the petitioner at the funeral home, they advised him that he did not have to go with them (R. 19). Deputy Hopkins testified that they probably advised the petitioner that they would bring him back when they were finished questioning him (R. 49). Agent True testified that when they asked the petitioner to go with them to the Sheriff's Department, the petitioner was "quite voluntary." (R. 14). True also testified that at the time the petitioner was advised of his rights that he was not under arrest and was free to leave (R. 20). The petitioner did not testify at the suppression hearing, thus there was no evidence presented that during the initial questioning the petitioner was in custody, or even that he believed himself to be in custody.

In *Oregon* v. *Mathiason,* 469 U.S. 492, 97 S.Ct. 711, 714 (1977) this Court found that *Miranda* warnings were not required to be given before the interrogation of Mathiason since he was not in custody "or otherwise deprived of his freedom of action in any significant way." This Court concluded that there was no indication that the questioning took place in a context where the defendant's freedom to depart was restricted in any way, emphasizing that the defendant appeared at the police station voluntarily, that he was informed he was not under arrest, and that he was permitted to leave. This Court further declared:

> ". . . [P]olice officers are not required to administer *Miranda* warnings to everyone that they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is the one whom the police suspect. *Miranda* warnings are required only where there has been a restriction on a person's freedom as to render him 'in custody.'" (429 U.S. at 495, 97 S.Ct. at 714).

Thus it is clear, based upon the record in this case, that the trial court was in error in suppressing the statements made. Furthermore, anything said prior to the giving of the *Miranda* warnings was properly admissible into evidence as the petitioner was not in custody. It follows logically that because there was no custodial interrogation, that consequently the officers were entitled to utilize any information which the petitioner gave them during that period. It is for these reasons that the trial court erred in suppressing the evidence later seized.

Even assuming *arguendo,* that the petitioner was in custody prior to being informed of his *Miranda* rights, the appellate court was still correct in reversing the suppression order. The trial court, while finding that the petitioner was subject to custodial interrogation from the beginning,

did not base its exclusion of evidence on the alleged *Miranda* violation. Rather the court excluded the items seized as fruits of the questioning which took place prior to the *Miranda* warnings, pursuant to the "fruit of the poisonous tree doctrine" of *Wong Sun* v. *United States,* 371 U.S. 471, 83 S.Ct. 407 (1963). The appellate court properly ruled, however, that even assuming that the interrogation was custodial the suppression of the evidence in question was error since the evidence was not "come at by exploitation" of the prior questioning.

The items suppressed by the trial court were dynamite and blasting paraphernalia which were discovered in the petitioner's car and trailer. These items were recovered by police after the petitioner consented to a search of his car. (R. 43, 49). The petitioner contends, however, that information which led the police to obtain this consent was acquired during the period of illegal custodial interrogation. The record, however, reflects that this is not the case.

Prior to questioning the petitioner the officers knew that he worked for Peabody Coal at the Pittsfield Mine as a blaster (R. 22-3, 39-40). They knew that petitioner was one of only three people at the mine with access to the dynamite (R. 41). They knew that the fuses and dynamite which blew up Cletus Meddows were of the type used by Peabody Coal (R. 23). They had been told that the petitioner was with his father at the time of the explosion (R. 23, 66). Deputy Hopkins was previously aware that petitioner owned a car of a certain type (R. 52). Hopkins had seen the car both at the petitioner's trailer and at the hospital on the morning of the death of petitioner's father (R. 57-8). Hopkins had also received information that an automobile was observed at the scene of the crime the night before the explosion (R. 53).

Thus, there is nothing in the record to support the court's finding that the search of the petitioner's car was prompted

by what the officers learned from the petitioner prior to the time they advised him of his rights (R. C13). During the initial questioning period, the police verified this information already in their possession (R. 12, 35).

The appellate court correctly held that under the facts of this case, that the fruit of the poisonous tree doctrine is inappropriate. In *Wong Sun,* this Court declared that the exclusionary rule has no application when the government learned of the evidence from an independent source. 371 U.S. at 487, 83 S.Ct. at 417. See also, *Silverthrone Lumber Co.* v. *United States,* 251 U.S. 385, 392, 40 S.Ct. 182, 183 (1920). In view of the fact that the officers knew prior to any questioning that the petitioner was employed as a dynamite shooter, that a car was observed near the scene of the murder the night before the explosion and that the petitioner owned a car, it is highly likely that they would have sought, after advising petitioner of his rights, consent to search his car. This would have most likely occurred regardless of petitioner's answers to the preliminary questions. This would have occurred independent of any information obtained from the petitioner.

Furthermore, as the appellate court noted, the questioning of the petitioner prior to his admonition of his rights was of such a routine nature, that his answers were incapable of being exploited in the manner suggested. Lastly, the petitioner was scrupulously admonished of his rights prior to his admission and prior to his consent to search was given. Viewing all of the factors involved in this case there is only a tenuous link between the questioning which took place prior to the *Miranda* warnings and the evidence later suppressed.

As this Court has stated on many occasions, the primary purpose of the exclusionary rule, if not the sole purpose, is to deter future unlawful police conduct. *Michigan* v. *Tucker,* 417 U.S. 433, 447, 94 S.Ct. 2357, 2365 (1974).

Under the facts of this case the exclusionary rule and the policy behind it is inapplicable. The Illinois Appellate Court properly applied the applicable federal constitutional standards to the facts in this case and for the reasons stated the writ should be denied.

CONCLUSION

For the reasons stated herein, respondent respectfully requests that the petition for writ of certiorari be denied.

Respectfully submitted,

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